

REMARKS

Claims 1-7 remain active in this application. The specification has been reviewed and editorial revisions made where seen to be appropriate. Claims 1-4 and 7 have been amended. Support for the amendment to the claims is found throughout the application, particularly on page 5, lines 21-28. No new matter has been introduced into the application.

Figure 2 has been amended in accordance with the specification, specifically on page 5, lines 21-22, wherein the main controller, previously "not shown," is illustrated as being connected to the controller 16 as stated in the above-noted passage of the specification. The specification has also been amended to present reference numeral 20 as representative of the main controller and to remove the words "not shown" from the aforementioned paragraph.

The Examiner has rejected claims 1-7 under 35 U.S.C. 103(a) as being obvious in view of Toba and further in view of Colonna et al. This rejection is respectfully traversed as the present invention is clearly different from and non-obvious in view of the references.

It is again respectfully pointed out that while Toba and Colonna et al. both use switches associated with a hinge of a foldable housing, neither teaches selection between a sounder and a vibrator with such a switch. Thus, the Examiner appears to be taking the position, through hindsight (particularly in discounting remarks in regard to "cultural factors" in the previous response), that control of *any* function using a hinge switch would be obvious, even in the absence of any suggestion of desirability of doing so. For example, in accordance with the present invention, a vibrator may be more likely to be perceived by a user when the communication device is folded (e.g. consistent with being placed in a pocket whereby a sounder might be muffled) and a sounder may be more likely to be perceived when the communication device is unfolded (e.g. placed on a desk where no tactile connection to a user exists) or vice-versa, depending on actual use environments. Further, the change of communication device environment by the user would otherwise require conscious recognition of effects on the effectiveness of the sounder or vibrator and switching, in the absence of the invention, would greatly complicate an otherwise simple and natural action by the user. Neither of the applied references teaches or remotely suggests the meritorious effects of the invention as supported by explicit recitations of the claims which, in any case, are not answered or shown to be within the level of ordinary skill in the art by the references relied upon by the Examiner.

Moreover, the Examiner's statement of the rejection indicates some confusion in regard to the organization of the invention. Thus, in response, Figure 2 has been amended to emphasize the difference of components and circuitry between the present invention and that of Toba (Figure 3). The "main controller (20)" that is now shown in Figure 2 of the application generally corresponds to the "control circuit (12)" in Toba as it is responsible for the reception of call signals, the LCDs and driver, and the operation keys. Toba also specifically shows that the "open/close detection circuit (5)" is attached to "control circuit (12)" generally corresponding to "main controller (20)" of the present invention. The "open/close detection circuit (5)" of Toba generally corresponds to the "two-level switch (4)" of the present application while Toba's "power supply control circuit (14)" is comparable to "controller (16)" of the present invention. It is clearly recited in the claims of the present application, as filed, that the "two-level switch (4)" is coupled with the "controller (16)" and *not* to the "main controller (20)" as taught by the structure of Toba. As a result, the vibrate and sounding functions are explicitly controlled *only* by the position of the communication units (2 and 3) in relationship to each other (as their relative positions control the "two-level switch (4)") and the function of switching between the vibrator and sounder is removed from the main controller processing overhead.

Further, Colonna et al. teaches an embodiment similar to Toba, as shown in Figure 1, wherein the "configuration sensor (112)," which is comparable to the "two-level switch 4" of the present application, inputs directly into "controller (106)" of Colonna et al., which is comparable to "main controller (20)" of the present application and "control circuit (12)" of Toba. As such, it is clear that the references of Toba and Colonna et al. cannot be properly combined under 35 U.S.C. 103(a) to make a *prima facie* demonstration of obviousness, particularly in view of the amendments to the claims further emphasizing an existing difference.

In view of the foregoing, the references of Colonna et al. and Toba do not individually or in combination teach the embodiment of the current invention wherein the switch for detecting the position of the two communication units in respect to one another is directly connected to the controller that is responsible for choosing the signal mode (e.g. vibrate or sound) and energizing the chosen mode to carry out the signaling action through either vibrating or sounding.

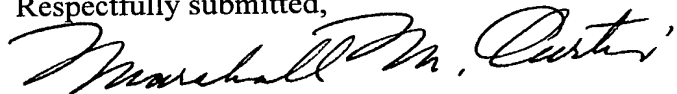
By the same token it is respectfully submitted that the finality of the present office action is premature. An action may not properly be made final when a *prima facie* demonstration of the propriety of the rejections contained therein has not been made. Therefore it is respectfully requested that the finality

of the action be withdrawn and the above-requested amendments made as a matter of right. In any case, it is also respectfully submitted that entry of the above-requested amendments is well justified and in order. The amendments do not raise new issues since the amendments are directed to emphasizing structure recited in the claims as finally rejected. The requested amendments are also well-justified as placing the application in condition for allowance or, in the alternative, better form for Appeal by reducing and/or simplifying issues. Accordingly, entry of the requested amendments is respectfully requested.

Since all rejections, objections and requirements contained in the outstanding official action have been fully answered and shown to be in error and/or inapplicable to the present claims, it is respectfully submitted that reconsideration is now in order under the provisions of 37 C.F.R. §1.111(b) and such reconsideration is respectfully requested. Upon reconsideration, it is also respectfully submitted that this application is in condition for allowance and such action is therefore respectfully requested.

If an extension of time is required for this response to be considered as being timely filed, a conditional petition is hereby made for such extension of time. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Respectfully submitted,



Marshall M. Curtis
Reg. No. 33,138

Whitham, Curtis & Christofferson, P. C.
11491 Sunset Hills Road, Suite 340
Reston, Virginia 20190

Customer Number: **30743**
(703) 787-9400